

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED
JUL 19 2016

Clerk, U.S. District Court
District Of Montana
Missoula

KEGAN JAMES SALTER,

Petitioner,

vs.

LEROY KIRKEGARD, et al.,

Respondents.

CV 15-23-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendation on June 7, 2016, recommending dismissal of Petitioner Kegan Salter's ("Salter") application for writ of habeas corpus under 28 U.S.C. § 2254. Salter failed to timely object to the Findings and Recommendation, and so waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendation, the Court agrees with

Judge Lynch that Salter has failed to prosecute this action and it should be dismissed. The Court further agrees that almost all of the factors identified in *Ferdik v. Bonzelet* weigh in favor of dismissal. 963 F.2d 1258, 1260–1261 (9th Cir. 1992) (describing these factors as “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the [Respondents]; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives”) (citations omitted).

There being no clear error in Judge Lynch’s Findings and Recommendation, IT IS ORDERED that:

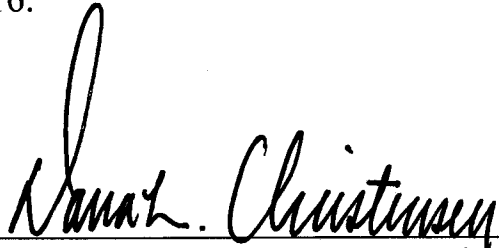
(1) Judge Lynch’s Findings and Recommendation (Doc. 24) are ADOPTED IN FULL.

(2) Salter’s claims relating to an affirmative defense to the conspiracy charge are DISMISSED under Fed. R. Civ. P. 41(b) for failure to prosecute.

(3) All other claims having already been denied, the Clerk of Court is directed to enter, by separate document, a judgment of dismissal under Fed. R. Civ. P. 41(b) as to the claims relating to an affirmative defense to the conspiracy charge and a judgment in favor of Respondents and against Petitioner on all other claims.

(4) A certificate of appealability is DENIED.

Dated this 19th day of July, 2016.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court